

Message Text

LIMITED OFFICIAL USE

PAGE 01 BONN 13681 01 OF 02 211300Z

44

ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SPC-03 SS-15

USIA-15 ACDA-19 IO-13 SAJ-01 NIC-01 SCA-01 JUSE-00

TRSE-00 DRC-01 /130 W

----- 026180

R 211247Z SEP 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC 7559

AMEMBASSY WARSAW

INFO AMEMBASSY MOSCOW

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY PRAGUE

AMEMBASSY SOFIA

AMEMBASSY BUDAPEST

USMISSION BERLIN

USMISSION NATO BRUSSELS

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 13681

E.O. 11652: N/A

TAGS: PFOR, PGOV, WB, GW, GE, BU, CZ, HU

SUBJECT: POLISH MOVE AGAINST FRG CONSULAR REPRESENTATION OF WEST BERLIN

SUMMARY. FONOFF CONTACTS TELL US THAT POLAND, OBVIOUSLY AS PART OF CONCERTED EE CAMPAIGN, HAS JOINED CSSR, BULGARIA, AND HUNGARY IN ATTEMPTING TO PUT NARROWEST POSSIBLE INTERPRETATION ON FRG'S RIGHT, AS INCLUDED IN QA, TO REPRESENT CONSULAR INTERESTS OF WEST BERLINERS. POLISH ACTION TAKES FORM OF REGULATION PRESCRIBING POLISH MILITARY MISSION IN WEST BERLIN AS SOLE ACCEPTABLE CHANNEL FOR HANDLING REQUESTS FOR LEGAL ASSISTANCE FROM WEST BERLIN ENTITIES OR FROM POLAND FOR PROCESSING

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 13681 01 OF 02 211300Z

IN WEST BERLIN, THUS EXCLUDING FRG EMBASSY WARSAW FROM

THIS FIELD OF CONSULAR ACTIVITY. FONOFF REPS SAY THAT UP TILL NOW FRG EMBASSY HAS SUCCESSFULLY PRESENTED SOME LEGAL ASSISTANCE REQUESTS FROM WEST BERLIN TO APPROPRIATE POLISH AUTHORITIES. THUS FRG SEES THIS AS STEP BACKWARD IN PRACTICAL TERMS AS WELL AS ADDITIONAL BURDEN ON BONN-WARSAW RELATIONSHIP. FONOFF COMPLAINED STRONGLY TO POLES DURING SEPT. 13-15 CYREK VISIT. FRANKFURTER ALLGEMEINE ZEITUNG OF SEPT. 19 CONTAINS DETAILED ACCOUNT OF POLISH ACTION AND EDITORIAL CONDEMNING IT. END SUMMARY.

1. FRANKFURTER ALLGEMEINE REPORTS IN CONSIDERABLE DETAIL ON REGULATION DRAFTED BY POLISH MINISTRY OF JUSTICE MAY 31 AND IN FORCE BY REASON OF ITS APPEARANCE IN "DZIENNIK VRZEDOWY" ON AUGUST 15 CONCERNING CHANNELS FOR JUDICIAL ASSISTANCE REQUESTS IN CIVIL MATTERS BETWEEN POLISH AND FRG COURTS. THE REGULATION, DESCRIBED AS BEING ISSUED IN CONNECTION WITH THE ESTABLISHMENT OF DIPLOMATIC RELATIONS BETWEEN POLAND AND THE FRG AND THE ESTABLISHMENT OF DIPLOMATIC MISSIONS, IS IN TWO PARTS. THE FIRST PART CONTAINS THE GUIDELINES OF THE LEGAL DIVISION OF THE JUSTICE MINISTRY TO POLISH COURTS AND STATE-OPERATED NOTARIAL BUREAUS FOR HANDLING OF JUDICIAL ASSISTANCE REQUESTS: SUCH REQUESTS FROM POLISH COURTS, INSOFAR AS THEY ARE TO BE CARRIED OUT WITHIN THE TERRITORY OF THE FRG, ARE TO BE PREPARED FOR FORWARDING TO THE CONSULAR SECTION OF THE POLISH EMBASSY IN COLOGNE. CONVERSELY, CORRESPONDING REQUESTS FROM COURTS OR OTHER ORGANS OF THE FRG ARE TO GO VIA THE EMBASSY OF THE FRG EITHER DIRECTLY TO THE PRESIDENT OF THE COMPETENT POLISH COURT OR TO THE POLISH JUSTICE MINISTRY.

2. PART TWO PROVIDES THAT THE JUDICIAL ASSISTANCE WITH WEST BERLIN IS TO CONTINUE TO BE HANDLED AS BEFORE. REQUESTS FROM POLISH COURTS FOR ACTION WITHIN THE TERRITORY OF WEST BERLIN ARE TO BE ADDRESSED TO THE CONSULAR SECTION OF THE POLISH MILITARY MISSION IN WEST BERLIN. CONVERSELY, CORRESPONDING REQUESTS OF COURTS OR OTHER ORGANS FROM THE TERRITORY OF WEST BERLIN ARE TO PASS THROUGH THE POLISH MILITARY MISSION IN WEST BERLIN

LIMITED OFFICIAL USE

PAGE 03 BONN 13681 01 OF 02 211300Z

WHICH IS TO FORWARD THEM TO THE POLISH MINISTRY OF JUSTICE.

3. THE ARTICLE STATES THAT THE REGULATION IN EFFECT MAKES A DISTINCTION BETWEEN NATURAL AND JURIDICAL PERSONS RESIDING IN THE WSB. IT POINTS OUT THAT THIS LIMITATION IN THE JURISDICTION OF A DIPLOMATIC MISSION IS A NEW ONE IN INTERNATIONAL LAW, AND IS BASED ON THE

NARROW INTERPRETATION OF "PERMANENT RESIDENTS OF THE WSB", AS THAT TERM APPEARS IN ANNEX IV(2)(A) OF THE QA, TO LIMIT FRG REPRESENTATION OF RESIDENTS OF THE WSB EXCLUSIVELY TO NATURAL PERSONS. THUS, IN THE CASE OF A RESIDENT OF THE WSB WHO HAS HAD AN AUTO ACCIDENT IN POLAND, THE FRG EMBASSY MAY REPRESENT HIS INTERESTS SO LONG AS THAT PERSON IS IN POLAND. HOWEVER, ONCE THAT PERSON HAS LEFT POLAND, AND IN LEGAL PROCEEDINGS SEEKS INFORMATION OR DOCUMENTS FROM POLAND THROUGH THE INTERPOSITION OF SOME REQUESTING WEST BERLIN AUTHORITY OR COURT, THE FRG NO LONGER HAS COMPETENCE THROUGH ITS

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 BONN 13681 02 OF 02 211256Z

44

ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SPC-03 SS-15

USIA-15 ACDA-19 IO-13 SAJ-01 NIC-01 SCA-01 JUSE-00

TRSE-00 DRC-01 /130 W

----- 026159

R 211247Z SEP 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC 7560

AMEMBASSY WARSAW

INFO AMEMBASSY MOSCOW

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY PRAGUE

AMEMBASSY SOFIA

AMEMBASSY BUDAPEST

USMISSION BERLIN

USMISSION NATO BRUSSELS

LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 13681

EMBASSY TO REPRESENT THIS RESIDENT OF THE WSB.

4. COMMENT. THE PUBLICATION OF A REGULATION MAKING LEGAL DISTINCTIONS PREVIOUSLY ONLY AIRED DURING CONFIDENTIAL NEGOTIATIONS BETWEEN THE FRG AND CZECHOSLOVAKIA, BULGARIA AND HUNGARY, APPEARS TO REPRESENT A HARDENING OF THE EASTERN POSITION. THE EMBASSY BELIEVES THAT THE BASIC PROBLEM IS NOT WHETHER THE WSB-RESIDENT REAL PARTY IN INTEREST IN THE LITIGATION OR PROCEEDING UNDERLYING A REQUEST FOR JUDICIAL ASSISTANCE IS A NATURAL OR JURIDICAL PERSON. THE BASIC PROBLEM IS CAUSED BY GOP REFUSAL TO RECOGNIZE ANY STANDING ON PART OF THE FRG TO LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 13681 02 OF 02 211256Z

ACT AS THE INTERMEDIARY OR CHANNEL FOR WEST BERLIN COURTS OR OTHER GOVERNMENTAL AUTHORITIES, WHICH THE GOP SEES FROM JUDICIAL ASSISTANCE DOCUMENTS AS THE ENTITIES OF RECORD THAT ARE SEEKING ASSISTANCE OR FROM WHOM SUCH ASSISTANCE IS BEING SOUGHT. THE FRG IS, OF COURSE, TAKING THE POSITION THAT THE JUDICIAL ASSISTANCE IS IN FACT BEING PERFORMED FOR THE NATURAL OR JURIDICAL WSB-RESIDENT RATHER THAN FOR THE WEST BERLIN COURT OR AUTHORITY NAMED ON THE LETTERHEAD.

5. EMBASSY WOULD WELCOME ANY COMMENTS EMBASSY WARSAW MAY HAVE AND WOULD APPRECIATE RECEIVING A TRANSLATION OF THE RELEVANT PARTS OF THE GOP JUSTICE MINISTRY REGULATION.
HILLENBRAND

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 21 SEP 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973BONN13681
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730920/aaaaaoeh.tel
Line Count: 203
Locator: TEXT ON-LINE
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 31 JUL 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <31-Jul-2001 by boyleja>; APPROVED <18-Sep-2001 by morefirh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: POLISH MOVE AGAINST FRG CONSULAR REPRESENTATION OF WEST BERLIN
TAGS: PFOR, PGOV, WB, GE, GC, BU, CZ, HU
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005